

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

JUDY MAC

§

Plaintiff,

§

v.

§

CASE NO. 1:19-cv-01230

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§

**ELK ELECTRIC, INC. and
MICHAEL KANETZKY**

§

§

Defendants.

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§

PLAINTIFF'S ORIGINAL COMPLAINT

This is an action for unpaid wages brought pursuant to the federal Fair Labor Standards Act (“FLSA”). Plaintiff Judy Mac worked as an administrative assistant for Defendants’ electrical construction services company. Defendants did not pay Ms. Mac the required overtime pay, even though she regularly worked well over 40 hours per week.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Plaintiff’s FLSA claims pursuant to the following:
 - a. 28 U.S.C. §1331 (Federal Question);
 - b. 28 U.S.C. § 1337 (Interstate Commerce); and
 - c. 29 U.S.C. § 216(b) (FLSA);
2. This Court has personal jurisdiction over the Defendants because each Defendant has sufficient contacts with this forum to give this Court general jurisdiction over each Defendant.
3. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (2).

4. The Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202.

THE PARTIES

5. The Plaintiff, Judy Mac, is an individual residing in Lee County, Texas. The Plaintiff has consented to the filing of this action for violations of the FLSA. *See Exhibit A.*

6. Defendant Michael Kanetzky is an individual residing in Travis County, Texas and may be served at his principal place of business, at 4707 Weidemar Lane, Austin, TX 78745.

7. Defendant Elk Electric, Inc. is a domestic corporation, formed and existing under the laws of the State of Texas, whose principal place of business is 4707 Weidemar Lane, Austin, TX 78745. Defendant Elk Electric, Inc. may be served with process by serving its registered agent, Michael Kanetzky at 4707 Weidemar Lane, Austin, TX 78745.

FACTS

8. Defendants own and operate a commercial electrical construction services company, located at 4707 Weidemar Lane, Austin, TX 78745, known as Elk Electric.

9. Ms. Mac worked for Defendants from approximately October 2011 until approximately March 2019.

10. Ms. Mac's primary duties consisted of clerical data entry for various routinized payroll and bookkeeping tasks, such as inputting hours from employees' time sheets into the company's computerized payroll system, preparing invoices, and logging payments made and received by the company.

11. Ms. Mac routinely worked over 40 hours per week, and often worked more than 50 hours per week for Defendants.

12. The Defendants did not properly record the number of hours Ms. Mac worked each week,

as required by the Fair Labor Standards Act.

13. Beginning around 2016, Defendant Michael Kanetzky stated that he would no longer pay overtime to office staff. From that point forward, Kanetzky generally prohibited Ms. Mac from recording her hours in excess of 40 into the payroll system and required her to work “off the clock” without pay, except for isolated occasions when he preauthorized overtime pay. Consequently, Ms. Mac did not receive any payment whatsoever for most of the hours she worked in excess of 40 hours per workweek throughout the relevant time period.

14. Ms. Mac was paid her weekly wage payments by check.

15. At all times relevant to this action, Defendants’ business was an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1).

16. At all times relevant to this action, Defendants’ business has had employees engaged in commerce of in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce, by any person.

17. In performing her work, Ms. Mac handled goods imported from other countries and states, such as office supplies and equipment.

18. At all times relevant to this action, Defendants’ business has had an annual gross volume of sales made or business done in excess of \$500,000, exclusive of excise taxes at the retail level which are separately stated.

19. At all times relevant to this lawsuit, Defendant Michael Kanetzky was an officer of and had operational control over Defendant Elk Electric, Inc.

20. At all times relevant to this lawsuit, Defendant Michael Kanetzky exercised control over

the terms and conditions of the employees' work; possessed and exercised the power to act on behalf of the company vis-a-vis its employees; had and exercised the power to establish the wages and working conditions of the company's employees, including Plaintiff, which included setting work schedules; and had and exercised the power to hire and fire employees, including Plaintiff.

21. At all times relevant to this action, Defendants jointly employed Ms. Mac, as defined by 29 C.F.R. § 791.2.

22. At all times relevant to this lawsuit, Ms. Mac was paid an hourly wage rate for her labor.

23. The Defendants knowingly, willfully, or with reckless disregard, failed to pay Ms. Mac the required time-and-a-half overtime pay.

CLAIM FOR RELIEF (FLSA Overtime)

24. The above-described actions by Defendants violated Plaintiff's overtime pay rights under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, for which the Plaintiff is entitled to relief pursuant to 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court award her:

- a. Her unpaid overtime pay;
- b. Liquidated damages in an amount equal to her unpaid wages;
- c. Reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b);
- d. Post-Judgment interest, as provided by law; and
- e. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

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